FILED
FEB 10 1992
OFFICE OF THE CLERK

NO. 91-1270

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ANN RICHARDS, Governor of Texas, et al.,

Appellants,

v.

LOUIS TERRAZAS, et al.,

Appellees.

APPELLEES' SECOND SUPPLEMENTAL RESPONSE TO APPELLANTS' MOTION FOR EXPEDITED CONSIDERATION OF JURISDICTIONAL STATEMENT

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

Appellees Louis Terrazas, Ernest Angelo, Jr., Tom Craddick, Robert A. Estrada, and Sim D. Stokes, III, file this second supplement to their response to the motion for expedited consideration of jurisdictional statement filed by Ann Richards, Dan Morales, and John Hannah, Jr. (collectively, "**the state**").

I.

Preliminary Statement

The purpose of this supplement is to apprise the Court of recent developments in this and other proceedings which relate to the state's request for summary reversal of the orders of the three-judge panel below. The charges made by the state concerning the alleged "judicial corruption" of the panel form the sole

ground for the requested summary reversal. However, the state has overplayed some pieces of evidence and ignored others. Thus, since the state's factual allegations are false, the motion premised upon them should be denied.

II.

Discussion

A. Representative George Pierce Never Had Access to the Court's Interim Senate Plan.

The state continues to argue both before this Court and to the media that State Representative George Pierce ("**Pierce**") had access to and changed the interim redistricting plan issued by the court below on December 24, 1991. The state perpetuates this claim despite the proof in its own records that Pierce actually never ad access to the court's plan.

The Texas legislature maintains a Redistricting Applications Computer, known as the **RED.APPL.** The RED.APPL. is located in the Reagan Building in Austin and is operated by the Texas Legislative Council ("**TLC**"). The TLC is a committee established under Texas law to assist the legislature, and is headed ex officio by the two presiding officers of the legislature, the Speaker of the House and the Lieutenant Governor. Each of these officers appoints four members of his respective house, and together the ten officials run the TLC. The TLC opens one or more RED.APPL. accounts for users of the system -- usually legislators or political groups --

and provides computer technicians to operate the terminals for the account holders. Until released into the public sector, the contents of a user's RED.APPL. account are proprietary, and any redistricting plan is prefixed by the account name and designated by the number assigned by the user. Once a plan is released to the public, the TLC assigns it a new number, prefixed by the initial of the legislative body it redistricts: thus, the secret plan agreed to by the state in October 1991 was designated **S560**, and the plan offered by Appellees in their December trial was designated **S562**.

According to records produced by the state last week when it filed its most recent motion to recuse one of the panel members ("**Second Recusal Motion**"), two accounts were opened for the use of the three-judge panel's law clerks. These were designated **NOWL** and **NOW2**. The state attached portions of the computer records related to these accounts to the Second Recusal Motion. Copies of pertinent portions of these records are compiled in **Appendix 1** hereto. These records demonstrate that Representative Pierce did not work on the plan that became the court-ordered plan. According to the records produced by the state, the facts appear to be as follows:

1. On December 23, 1991, J.D. Munn ("**Munn**"), Judge Nowlin's law clerk, worked on plan **NOW2S501** in account NOW2. He made changes in that plan and saved it as **NOW2S503**.

2. Pierce was allowed to view a screen showing a portion of Bexar County; this was part of plan NOW2S503 and was in account NOW2.

3. Changes were made in plan NOW2S503; the changes were in the lines for districts 19 and 26 in Bexar County. Some 35 of Texas' 7,000 Voter Tabulation Districts were involved. This occurred between 12:03 and 12:26 on December 23. Pierce left, and the TLC operator and Munn remained. Deposition of George Pierce, 2/3/92 ("**Pierce Tr.**") at 69. [Attached to Appellees' response to the state's instant motion, dated February 11, 1992]. According to the state's records, Munn did not request any population analysis reports, maps, or other output on December 23, 1991. See Appendix 1.

4. Munn and Pierce did not work in account NOWL. In fact, the exhibits attached to the Second Recusal Motion indicate that Munn did no work in account NOWL between December 18 and December 24. See Appendix 1. Law clerks Britt Buchanan ("**Buchanan**") and Michelle Bray ("**Bray**") used that account, but there are no entries showing that Munn used it.

5. The court-ordered plan is designated **S567**. That plan was drafted in the NOWL account under the designation **NOWLS508**. On December 22, 1991, Bray worked on the plan

and designated it a public plan S565. The next day, several hours after Pierce left the REDAPPL, Buchanan worked on plan S508 in the NOWL account. This occurred between 5:52 and 6:25 p.m. on December 23.

6. Buchanan made changes to the Bexar County area in plan S508. These changes were not identical to those made by Pierce in his work with Munn on plan S503 in the NOW2 account. Buchanan made changes that Pierce did not make in plan S503. He also did not make changes in plan S508 that Pierce made in plan S503.

7. The state does not allege that Pierce was present with Buchanan and the operator on December 23. Since it seems to have no trouble obtaining affidavits from TLC employees, they no doubt would make such an allegation if there was a basis to do so.

These records -- not produced by the state to this Court, and only produced to the court below three weeks after the first public allegations -- belie the public charges in the press and the pleadings that Pierce drew lines in the court-ordered plan are false. These charges rely on artful manipulation of the facts and careful crafting of allegations to lead to a false conclusion. The facts prove that Pierce did not see, let alone alter, the plan that became the court-ordered plan. There is no evidence that anything he did was transferred into the court-ordered plan.

B. **Changes Made on December 23 Improved Minority Voting Rights in Bexar County.**

The state's records prove that Pierce did not touch the court-ordered plan himself. Now that the meaning of the state's records has been deciphered -- with no help from the state -- the state recently has backed off of its claim that Pierce changed the plans, and now hints in the press that his changes in the NOW2 account somehow tainted the court's plan in the NOWL account.

However, for all of attention on the form of the court's December 23d changes, the state never addresses the substance of the differences between the NOWL plan in the morning, as S565, and as released the following day, as S567. The state does not argue -- much less offer proof -- that the lower court's senate plan does not provide greater protection to minority voters than its incumbent-protecting predecessors. Neither does the state contend that the lower court's plan violates section 2 of the Voting Rights Act.

The truth is that the changes made by the court after Pierce made his corrections to another plan in another account actually increased minority population concentrations in the affected minority district, District 19 in Bexar County. Before the public release of S567, the court's plan in the account NOW1 (S565) drew Senate District 19 (in the center of San Antonio in Bexar County) with a total Hispanic population of 60.8% and an Hispanic voting

age population ("**VAP**") of 55.8%. After the final changes were made, S567 drew District 19 with a total Hispanic population of 61.1% and an Hispanic VAP of 56.3%. This represents an increase of 1,890 Hispanic citizens and 1,644 Hispanic voters in the minority majority district. Conversely, the Hispanic population of Senate District 26 -- the adjacent district and the one whose lines the state's alleges Pierce changed -- fell by 1,656 Hispanic citizens and 1,491 Hispanic voters between S565 and S567. Throughout the lower court's planning process, District 26 always had been a majority Anglo district: under S565 Anglos represented 76.8% of its VAP, and under S567 they represent 77%. Copies of the population analysis reports, which were prepared by the state's computer, verify these figures, and are attached as **Appendix 2**. This evidence, as contradistinguished from the state's conjectures, shows that the final court plan improved minority voting strength in District 19 by moving minority communities out of the Anglo-majority District 26. It is this change -- the substance of which the state ignores or avoids -- that the state says requires the entire plan to fall.

C. Representative Alan Schoolcraft Never Contacted the Court Below.

The state's newest "revelation" -- found in telephone logs it has had for over six weeks -- is that State Representative Alan Schoolcraft ("**Schoolcraft**"), another San Antonio Republican, somehow fixed his putative senate district after a two-minute

phone call to Judge Nowlin's chambers on December 23. According to the state's motion for oral argument (mooted by the denial of its most recent emergency motion for stay of the senate primary), the existence in the state's phone log of a two-minute call placed from one telephone to another supports reversal of the court's opinion below. There are, however, at least three serious problems with this argument.

The first difficulty is technical, since the state's phone logs reflect only that a call was made, and not that a call was answered. Thus, the reputed Schoolcraft "connection" could be a busy signal, a disconnect, an answering machine, or an unanswered series of rings. Moreover, since this system rounds up to the nearest minute, the whole episode could comprise a ninety-second missed connection.

The second problem is logical, since the state's theory up to now has rested on the fact that Pierce "fixed" his future senate district at the court's behest, or at least with its knowledge. The idea that the same was done for Schoolcraft -- who also is running for Senate District 26 -- creates mutually exclusive conspiracy theories. In this race, the state should back only one stalking horse at a time.

Both of these obstacles, however, are minor in comparison to the third problem: the state is factually wrong. As shown by Schoolcraft's affidavit, attached hereto as **Appendix 3**, the court

never heard from the representative or anyone else acting on his behalf. The telephone from which the call was made is not in his office, and the call was made when he was out of town. Schoolcraft's affidavit demonstrate's the desperate and slipshod manner in which the state is acting: had it bothered to contact him before making serious charges in the highest court in the country, it would have learned that it was about to sully the reputation of yet another public official without cause.

D. The State's New Senate Plan Has Not Been Precleared.

The final point concerns the state's unsupported allegation that the legislative senate plan passed in January 1992 has received Justice Department preclearance. The fallacies in that argument were addressed very ably by the Justice Department in a brief submitted last week before the three-judge court in the District of Columbia presiding over the state's judicial preclearance action. A copy of that brief is attached hereto as **Appendix 4.**

IV.

Conclusion

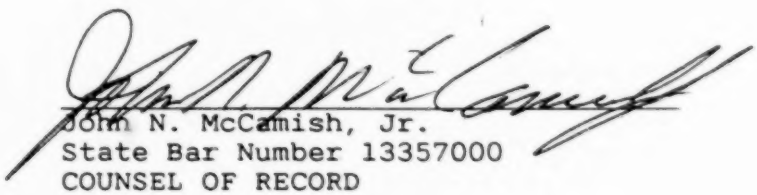
Texas has a senate plan, one that is more protective of minority voting rights than the deal struck by the incumbents in the legislature. Today, Texans began the early balloting process that precedes the March 10 "Super Tuesday" election. Ballots have been prepared that contain the names of the candidates who filed

for office under the court's interim plan. Whatever the problems the state sees or worsens through publicity have nothing to do with the names on those ballots or the people who will vote for them. The fact that the Judicial Conference for the Fifth Circuit has decided to initiate an investigation is a matter for reasoned deliberation and due process. Its conclusions, which Appellees believe will exonerate the lower court from the self-promoting charges of the state's elected officials, are not to be begged or mooted by precipitate action taken in response to questionable rumors and cynical suspicion.

For these reasons -- and because the state's suspicions appear disproved by its records -- Appellees continue to urge this Court to deny the motion for expedited consideration of Appellants' jurisdictional statement, or, in the alternative, to grant summary affirmance or dismissal of the state's appeal.

February 19, 1992

Respectfully submitted,



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Activity in Court Computer Accounts

Account Number	Date	Operator	Beginning Time	Ending Time	Plan #	Activity	Planner
NOW2	12/18/91				NOW2S500	created S500 from Mena Plan (S560)	Buchanan
NOW2	12/18/91	TMH	9:07 PM	9:40 PM	NOW2S501	created S501 from Fair Redistricting (S562)	Buchanan
NOWL	12/19/91	SLD	10:53 AM	12:05 PM	NOWLS500	created S500 from SB31 (S552)	Buchanan or Bray
NOWL	12/19/91	SJK	1:26 PM	3:54 PM	NOWLS500	modified S500	Bray, Carl
NOW2	12/19/91	TMH	3:13 PM	4:49 PM	NOW2S501	modified S501	Buchanan, Randall
NOWL	12/19/91	SJK	3:57 PM	4:08 PM	NOWLS500	modeling started, S500 recalculated	Bray, Carl
NOWL	12/19/91	SJK	4:09 PM	4:32 PM	NOWLS500	modified S500	Bray, Carl
NOWL	12/19/91	SJK	4:44 PM	5:55 PM	NOWLS500	modified S500	Bray
NOW2	12/19/91	TMH	4:50 PM	4:50 PM	NOW2S501	changed plan description	Buchanan, Randall
NOWL	12/19/91	SJK	6:00 PM	6:00 PM	NOWLS502	created S502 as new computer plan	Bray
NOWL	12/19/91	SJK	6:00 PM	6:46 PM	NOWLS502	modified S502	Bray
NOWL	12/19/91	CWK	8:20 PM	9:33 PM	NOWLS502	modified S502	Bray
NOWL	12/19/91	CWK	9:36 PM	9:36 PM	NOWLS501	copied by district from SB31 (S552)	Bray
NOWL	12/19/91	CWK	9:40 PM	9:40 PM	NOWLS502	NOWLS503 merged into S502	Bray
NOWL	12/19/91	CWK	9:40 PM	9:40 PM	NOWLS503	created S503 from SB31 (S552)	Bray
NOWL	12/19/91	CWK	9:40 PM	9:40 PM	NOWLS503	S503 merged into NOWLS502	Bray
NOWL	12/19/91	CWK	9:43 PM	11:46 PM	NOWLS502	modeling started, S502 recalculated	Bray
NOWL	12/19/91	CWK	11:47 PM	12:01 AM	NOWLS502	modified S502	Bray
NOWL	12/20/91	SRH	1:28 PM	3:14 PM	NOWLS502	modeling started, S502 recalculated	Bray
NOWL	12/20/91	SRH	3:16 PM	4:11 PM	NOWLS502	modified S502	Bray
NOW2	12/20/91	TMH	3:24 PM	4:15 PM	NOW2S501	modified S501	Buchanan, Munn
NOWL	12/20/91	SRH	4:13 PM	4:53 PM	NOWLS502	modified S502	Bray
NOW2	12/20/91	TMH	4:18 PM	4:18 PM	NOW2S502	created S502	Buchanan, Munn
NOW2	12/20/91	TMH	4:21 PM	4:21 PM	NOW2S501	replaced county 023 from NOW2S502	Buchanan, Munn
NOW2	12/20/91	TMH	4:24 PM	4:24 PM	NOW2S501	S501 recalculated	Buchanan, Munn
NOW2	12/20/91	TMH	4:25 PM	4:50 PM	NOW2S501	modified S501	Buchanan, Munn
NOWL	12/20/91	SRH	5:05 PM	5:12 PM	NOWLS504	created S504 from Fair Redistricting (S562)	Bray
NOWL	12/20/91	SRH	5:19 PM	5:19 PM	NOWLS504	NOWLS505 merged into S504	Bray
NOWL	12/20/91	SRH	5:19 PM	5:19 PM	NOWLS505	created S505 from SB31 (S552)	Bray
NOWL	12/20/91	SRH	5:19 PM	5:19 PM	NOWLS505	S505 merged into NOWLS504	Bray
NOWL	12/20/91	SRH	5:20 PM	7:22 PM	NOWLS504	modified S504	Bray
NOWL	12/20/91	SRH	8:45 PM	9:25 PM	NOWLS504	modified S504	Bray
NOWL	12/20/91	SRH	9:36 PM	10:21 PM	NOWLS504	modified S504	Bray

APPENDIX 1

Activity in Court Computer Accounts

Account Number	Date	Operator	Beginning Time	Ending Time	Plan #	Activity	Planner
NOWL	12/20/91	SRH	10:27 PM	10:49 PM	NOWLS504	modified S504	Bray
NOWL	12/20/91	SRH	10:51 PM	11:12 PM	NOWLS502	modified S502	Bray
NOWL	12/20/91	SRH	11:17 PM	11:30 PM	NOWLS506	created S506 from Fair Redistricting (S562)	Bray
NOWL	12/20/91	SRH	11:33 PM	11:48 PM	NOWLS506	modified S506	Bray
NOWL	12/20/91	SRH	11:52 PM	11:52 PM	NOWLS505	NOWLS507 merged into S505	Bray
NOWL	12/20/91	SRH	11:52 PM	11:52 PM	NOWLS507	created S507 from SB31 (S552)	Bray
NOWL	12/20/91	SRH	11:52 PM	11:52 PM	NOWLS507	S507 merged into NOWLS505	Bray
NOWL	12/20/91	SRH	11:56 PM	11:56 PM	NOWLS506	NOWLS507 merged into S506	Bray
NOWL	12/20/91	SRH	11:56 PM	11:56 PM	NOWLS507	S507 merged into NOWLS506	Bray
NOWL	12/20/91	SRH	11:57 PM	11:59 PM	NOWLS506	modified S506, session continued till 12/21/91	Bray
NOWL	12/21/91	SRH	12:00 AM	12:12 AM	NOWLS506	modified S506, session began on 12/20/91	Bray
NOWL	12/21/91	BDM	10:11 AM	1:08 PM	NOWLS506	modified S506	Bray
NOWL	12/21/91	RKB	2:21 PM	3:00 PM	NOWLS508	created S508 from Fair Redistricting (S562)	Bray
NOWL	12/21/91	RKB	3:10 PM	3:10 PM	NOWLS508	NOWLS509 merged into S508	Bray
NOWL	12/21/91	RKB	3:10 PM	3:10 PM	NOWLS509	created S509 from SB31 (S552)	Bray
NOWL	12/21/91	RKB	3:10 PM	3:10 PM	NOWLS509	S509 merged into NOWLS508	Bray
NOWL	12/21/91	RKB	3:11 PM	4:18 PM	NOWLS508	modified S508	Bray
NOWL	12/21/91	RKB	4:23 PM	4:23 PM	NOWLS504	S504 merged into NOWLS508	Bray
NOWL	12/21/91	RKB	4:23 PM	4:23 PM	NOWLS508	NOWLS504 merged into S508	Bray
NOWL	12/21/91	RKB	4:28 PM	4:28 PM	NOWLS502	S502 merged into NOWLS508	Bray
NOWL	12/21/91	RKB	4:28 PM	4:28 PM	NOWLS508	NOWLS502 merged into S508	Bray
NOWL	12/21/91	RKB	4:39 PM	4:39 PM	NOWLS508	NOWLS510 merged into S508	Bray
NOWL	12/21/91	RKB	4:39 PM	4:39 PM	NOWLS510	created S510 from SB31 (S552)	Bray
NOWL	12/21/91	RKB	4:39 PM	4:39 PM	NOWLS510	S510 merged into NOWLS508	Bray
NOWL	12/21/91	RKB	4:40 PM	5:04 PM	NOWLS508	modeling started, S508 recalculated	Bray
NOWL	12/21/91	RKB	5:04 PM	5:15 PM	NOWLS508	modified S508	Bray
NOWL	12/21/91	RKB	5:20 PM	5:20 PM	NOWLS508	replaced county 339 from NOWLS501	Bray
NOWL	12/21/91	RKB	5:22 PM	5:22 PM	NOWLS508	S508 recalculated	Bray
NOWL	12/21/91	RKB	5:23 PM	6:25 PM	NOWLS508	modified S508	Bray
NOWL	12/22/91	SDS	10:07 AM	11:29 AM	NOWLS508	modified S508	Bray
NOW2	12/23/91	BDM	11:39 AM	11:51 AM	NOW2S501	modified S501	Munn
NOW2	12/23/91	BDM	11:51 AM	11:55 AM	NOW2S501	NOW2S501 saved to NOW2S503	Munn
NOW2	12/23/91	BDM	11:56 AM	11:56 AM	NOW2S501	saved S501	Munn

Plan : S501
Date Created : 12/18/91

Audit File

CF	91-10-23	2:43 PM	plans562	--------	redrvh	plan	Copy from another client
MI	91-12-18	9:07 PM	now2s501	--------	redtmh	now2	Modeling started
MO	91-12-18	9:40 PM	now2s501	--------	redtmh	now2	No changes saved
MO	91-12-18	9:40 PM	now2s501	--------	redtmh	now2	Exited Modeling
MI	91-12-19	3:13 PM	now2s501	--------	redtmh	now2	Modeling started
MS	91-12-19	4:48 PM	now2s501	--------	redtmh	now2	Plan Modeling Save
MO	91-12-19	4:48 PM	now2s501	--------	redtmh	now2	Changes saved
MO	91-12-19	4:49 PM	now2s501	--------	redtmh	now2	Exited Modeling
ED	91-12-19	4:50 PM	now2s501	--------	redtmh	now2	Description modified
MI	91-12-20	3:24 PM	now2s501	--------	redtmh	now2	Modeling started
M	91-12-20	4:14 PM	now2s501	--------	redtmh	now2	Plan Modeling Save
MO	91-12-20	4:14 PM	now2s501	--------	redtmh	now2	Changes saved
MO	91-12-20	4:15 PM	now2s501	--------	redtmh	now2	Exited Modeling
RP	91-12-20	4:21 PM	now2s501	now2s502	redtmh	now2	Replaced cnty:023
RC	91-12-20	4:24 PM	now2s501	now2s502	redtmh	now2	Plan Recalculated
MI	91-12-20	4:25 PM	now2s501	now2s502	redtmh	now2	Modeling started
MS	91-12-20	4:49 PM	now2s501	now2s502	redtmh	now2	Plan Modeling Save
MO	91-12-20	4:49 PM	now2s501	now2s502	redtmh	now2	Changes saved
MO	91-12-20	4:50 PM	now2s501	now2s502	redtmh	now2	Exited Modeling
MI	91-12-23	11:39 AM	now2s501	--------	redbdm	now2	Modeling started
MS	91-12-23	11:50 AM	now2s501	--------	redbdm	now2	Plan Modeling Save
MO	91-12-23	11:50 AM	now2s501	--------	redbdm	now2	Changes saved
MO	91-12-23	11:51 AM	now2s501	--------	redbdm	now2	Exited Modeling
MI	91-12-23	11:51 AM	now2s501	--------	redbdm	now2	Modeling started

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Activity in Court Computer Accounts

Account Number	Date	Operator	Beginning Time	Ending Time	Plan #	Activity	Planner
NOW2	12/23/91	BDM	11:58 AM	11:58 AM	NOW2S503	S503 created from NOW2S501, description modified	Munn
NOW2	12/23/91	BDM	11:58 AM	12:02 PM	NOW2S503	modified S503	Munn
NOW2	12/23/91	BDM	12:03 PM	12:24 PM	NOW2S503	modified S503	Munn
NOW2	12/23/91	BDM	12:26 PM	12:26 PM	NOW2S503	description of S503 modified	Munn
NOWL	12/23/91	RVH	5:52 PM	6:25 PM	NOWLS508	modified S508	Buchanan

```
MC 91-12-23 11:55 AM now2s501 -------- redbdm now2    now2s501 saved to now2s50
MO 91-12-23 11:56 AM now2s501 -------- redbdm now2                Changes save
   91-12-23 11:56 AM now2s501 -------- redbdm now2                Exited Modelin
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ED 91-12-23 11:58 AM now2s503 -------- redbdm now2          Description modifie
   91-12-23 11:58 AM now2s503 -------- redbdm now2          Modeling starte
MO 91-12-23 12:02 PM now2s503 -------- redbdm now2          Changes save
MO 91-12-23 12:02 PM now2s503 -------- redbdm now2          Exited Modelin
MI 91-12-23 12:03 PM now2s503 -------- redbdm now2          Modeling starte
MS 91-12-23 12:24 PM now2s503 -------- redbdm now2          Plan Modeling Sav
MO 91-12-23 12:24 PM now2s503 -------- redbdm now2          Changes save
MO 91-12-23 12:24 PM now2s503 -------- redbdm now2          Exited Modelin
ED 91-12-23 12:26 PM now2s503 -------- redbdm now2          Description modifie
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MO	91-12-21	6:25	PM	no 508	nowls501	redrkb	nowl	Exited Modelin
MI	91-12-22	10:07	AM	nowls508	--------	redsds	nowl	Modeling started
MS	91-12-22	11:29	AM	nowls508	--------	redsds	nowl	Plan Modeling Save
	91-12-22	11:29	AM	nowls508	--------	redsds	nowl	Changes saved
MO	91-12-22	11:29	AM	nowls508	--------	redsds	nowl	Exited Modeling
MI	91-12-23	5:52	PM	nowls508	--------	redrvh	nowl	Modeling started
MS	91-12-23	6:24	PM	nowls508	--------	redrvh	nowl	Plan Modeling Save
MO	91-12-23	6:24	PM	nowls508	--------	redrvh	nowl	Changes saved
MO	91-12-23	6:25	PM	nowls508	--------	redrvh	nowl	Exited Modeling

PAR:20 4B
DATA: 1990 CENSUS DATA - UNADJUSTED
PLANID: PLANS565 122391 16:01:20

PLAN POPULATION ANALYSIS
SENATE DISTRICTS

TOTAL STATE POPULATION 16,986,510
TOTAL DISTRICTS REQUIRED 31
IDEAL DISTRICT POPULATION 547,952

	MEAN (AVERAGE)	SMALLEST POPULATION DIST: 25	LARGEST POPULATION DIST: 22
DISTRICT POPULATION	547,952	520,631	575,314
TOTAL DEVIATION	15,466	-27,321	27,362
PERCENT DEVIATION	2.82%	-4.99%	4.99%

UNASSIGNED POPULATION 0
REMAINING DISTRICTS 0
UNASSIGNED MEAN DEVIATION

PLAN'S RANGE OF DEVIATION: TOTAL = 54,683 PERCENT = 9.98%

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PLANID: PLANS565 122391 16:01:20

DIST	DEVIATION TOTAL	DEVIATION PERCENT		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
18	13,556	2.47	TTL	561,508	54,167	146,518	198,858	352,558	10,092	9.6	26.1	35.4	62.8	1.8
			VAP	400,161	37,119	91,673	127,692	265,984	6,485	9.3	22.9	31.9	66.5	1.6
19	0	0.00	TTL	547,952	25,522	332,941	357,041	183,544	7,367	4.7	60.8	65.2	33.5	1.3
			VAP	394,968	18,114	220,332	237,626	151,737	5,605	4.6	55.8	60.2	38.4	1.4
20	-25,868	-4.72	TTL	522,084	14,815	335,427	349,232	168,092	4,760	2.8	64.2	66.9	32.2	0.9
			VAP	348,370	9,955	208,007	217,401	127,619	3,350	2.9	59.7	62.4	36.6	1.0
21	15,357	2.80	TTL	563,309	15,190	358,205	372,625	183,020	7,664	2.7	63.6	66.1	32.5	1.4
			VAP	377,732	10,378	224,420	234,383	137,808	5,541	2.7	59.4	62.1	36.5	1.5
22	27,362	4.99	TTL	575,314	13,512	40,739	53,958	510,112	11,244	2.3	7.1	9.4	88.7	2.0
			VAP	413,208	9,078	24,964	33,889	371,848	7,471	2.2	6.0	8.2	90.0	1.8
23	-810	-0.15	TTL	547,142	263,114	118,775	377,123	159,480	10,539	48.1	21.7	68.9	29.1	1.9
			VAP	385,769	177,311	74,079	248,434	130,089	7,246	46.0	19.2	64.4	33.7	1.9
24	-5,746	-1.05	TTL	542,206	49,701	305,539	353,592	182,461	6,153	9.2	56.4	65.2	33.7	1.1
			VAP	364,942	34,168	190,337	223,600	136,984	4,358	9.4	52.2	61.3	37.5	1.2
25	-27,321	-4.99	TTL	520,631	29,857	91,167	120,146	393,889	6,596	5.7	17.5	23.1	75.7	1.3
			VAP	383,752	20,767	56,357	76,689	302,372	4,691	5.4	14.7	20.0	78.8	1.2
26	25,629	4.68	TTL	573,581	45,645	91,809	135,876	425,950	11,755	8.0	16.0	23.7	74.3	2.0
			VAP	414,616	29,923	58,739	87,800	318,348	8,468	7.2	14.2	21.2	76.8	2.0
27	0	0.00	TTL	547,952	1,571	446,813	447,934	97,271	2,747	0.3	81.5	81.7	17.8	0.5
			VAP	355,717	1,006	273,302	274,078	79,712	1,927	0.3	76.8	77.0	22.4	0.5
28	-24,389	-4.45	TTL	523,563	30,891	160,344	190,248	327,275	6,040	5.9	30.6	36.3	62.5	1.2
			VAP	369,493	19,980	94,012	113,508	251,581	4,404	5.4	25.4	30.7	68.1	1.2
29	-15,357	-2.80	TTL	532,595	17,185	375,146	390,922	134,349	7,324	3.2	70.4	73.4	25.2	1.4
			VAP	360,677	11,661	240,035	251,035	104,230	5,412	3.2	66.6	69.6	28.9	1.5
30	-23,163	-4.23	TTL	524,789	32,203	44,015	75,676	441,042	8,071	6.1	8.4	14.4	84.0	1.5
			VAP	390,353	21,797	26,535	48,020	336,550	5,783	5.6	6.8	12.3	86.2	1.5
31	-23,450	-4.28	TTL	524,502	22,049	103,478	124,855	391,348	8,299	4.2	19.7	23.8	74.6	1.6
			VAP	365,147	14,025	58,922	72,619	286,951	5,577	3.8	16.1	19.9	78.6	1.5
PLAN TOTALS			TTL	16,986,510	2,021,632	4,339,905	6,316,265	10,291,680	378,565	11.9	25.5	37.2	60.6	2.2
			VAP	12,150,671	1,363,770	2,719,586	4,056,274	7,828,352	266,045	11.2	22.4	33.4	64.4	2.2

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DIST	DEVIATION TOTAL	DEVIATION PERCENT		POPULATION TOTAL	BLACK	HISPANIC	BLK+HISP	ANGLO	OTHER	% OF POPULATION BLACK	HISP	B+H	ANGLO	OTHER
1	-19,879	-3.63	TTL	528,073	101,166	15,636	116,266	408,026	3,781	19.2	3.0	22.0	77.3	0.7
			VAP	384,173	67,018	9,563	76,260	305,264	2,649	17.4	2.5	19.9	79.5	0.7
2	26,196	4.78	TTL	574,148	56,428	36,216	92,023	471,277	10,848	9.8	6.3	16.0	82.1	1.9
			VAP	413,942	38,038	22,315	59,988	346,664	7,290	9.2	5.4	14.5	83.7	1.8
3	10,975	2.00	TTL	558,927	70,483	24,700	94,609	460,270	4,048	12.6	4.4	16.9	82.3	0.7
			VAP	412,356	46,439	14,957	61,045	348,435	2,876	11.3	3.6	14.8	84.5	0.7
4	-2,911	-0.53	TTL	545,041	95,369	28,480	123,009	413,162	8,870	17.5	5.2	22.6	75.8	1.6
			VAP	388,272	63,231	17,813	80,545	302,115	5,612	16.3	4.6	20.7	77.8	1.4
5	-14,435	-2.63	TTL	533,517	96,430	62,155	157,195	369,090	7,232	18.1	11.7	29.5	69.2	1.4
			VAP	401,583	69,202	40,677	108,965	286,900	5,718	17.2	10.1	27.1	71.4	1.4
6	6,740	1.23	TTL	554,692	83,415	97,722	178,906	354,263	21,523	15.0	17.6	32.3	63.9	3.9
			VAP	388,435	52,636	60,541	111,869	262,154	14,412	13.6	15.6	28.8	67.5	3.7
7	23,216	4.24	TTL	571,168	26,633	60,513	86,385	459,404	25,379	4.7	10.6	15.1	80.4	4.4
			VAP	408,310	16,696	38,755	54,988	336,237	17,085	4.1	9.5	13.5	82.3	4.2
8	26,069	4.76	TTL	574,021	27,443	50,409	77,191	474,449	22,381	4.8	8.8	13.4	82.7	3.9
			VAP	443,855	19,673	34,520	53,767	374,217	15,871	4.4	7.8	12.1	84.3	3.6
9	-9,750	-1.78	TTL	538,202	64,378	57,239	120,670	410,150	7,382	12.0	10.6	22.4	76.2	1.4
			VAP	384,345	41,393	34,495	75,333	303,836	5,176	10.8	9.0	19.6	79.1	1.3
10	-17,694	-3.23	TTL	530,258	26,702	36,521	62,722	452,015	15,521	5.0	6.9	11.8	85.2	2.9
			VAP	387,950	17,166	23,261	40,137	337,074	10,739	4.4	6.0	10.3	86.9	2.8
11	-1,869	-0.34	TTL	546,083	58,445	84,943	141,936	389,754	14,393	10.7	15.6	26.0	71.4	2.6
			VAP	392,287	39,748	53,615	92,416	289,963	9,908	10.1	13.7	23.6	73.9	2.5
12	-1,661	-0.30	TTL	546,291	123,266	174,829	295,408	236,585	14,298	22.6	32.0	54.1	43.3	2.6
			VAP	384,694	81,723	106,351	186,494	188,287	9,913	21.2	27.6	48.5	48.9	2.6
13	-6,047	-1.10	TTL	541,905	316,629	91,112	402,545	126,169	13,191	58.4	16.8	74.3	23.3	2.4
			VAP	381,996	218,502	56,868	271,967	100,601	9,428	57.2	14.9	71.2	26.3	2.5
14	20,984	3.83	TTL	568,936	63,416	124,704	185,916	364,938	18,082	11.1	21.9	32.7	64.1	3.2
			VAP	430,890	43,442	82,412	124,542	291,987	14,361	10.1	19.1	28.9	67.8	3.3
15	-19,368	-3.53	TTL	528,584	84,879	301,982	383,392	133,749	11,443	16.1	57.1	72.5	25.3	2.2
			VAP	361,135	57,346	186,162	241,340	111,584	8,211	15.9	51.5	66.8	30.9	2.3
16	24,928	4.55	TTL	572,880	52,218	53,553	104,778	443,093	25,009	9.1	9.3	18.3	77.3	4.4
			VAP	433,989	35,653	35,700	70,707	345,817	17,465	8.2	8.2	16.3	79.7	4.0
17	18,704	3.41	TTL	566,656	58,910	88,275	145,228	374,895	46,533	10.4	15.6	25.6	66.2	8.2
			VAP	427,554	40,582	59,867	99,137	295,404	33,013	9.5	14.0	23.2	69.1	7.7

DIST	DEVIATION TOTAL	DEVIATION PERCENT		POPULATION TOTAL	POPULATION BLACK	POPULATION HISPANIC	POPULATION BLK+HISP	POPULATION ANGLO	POPULATION OTHER	% OF POPULATION BLACK	% OF POPULATION HISP	% OF POPULATION B+H	% OF POPULATION ANGLO	% OF POPULATION OTHER
1	-19,879	-3.63	TTL	528,073	101,166	15,636	116,266	408,026	3,781	19.2	3.0	22.0	77.3	0.7
			VAP	384,173	67,018	9,563	76,260	305,264	2,649	17.4	2.5	19.9	79.5	0.7
2	26,196	4.78	TTL	574,148	56,428	36,216	92,023	471,277	10,848	9.8	6.3	16.0	82.1	1.9
			VAP	413,942	38,038	22,315	59,988	346,664	7,290	9.2	5.4	14.5	83.7	1.8
3	10,975	2.00	TTL	558,927	70,483	24,700	94,609	460,270	4,048	12.6	4.4	16.9	82.3	0.7
			VAP	412,356	46,439	14,957	61,045	348,435	2,876	11.3	3.6	14.8	84.5	0.7
4	-2,911	-0.53	TTL	545,041	95,369	28,480	123,009	413,162	8,870	17.5	5.2	22.6	75.8	1.6
			VAP	388,272	63,231	17,813	80,545	302,115	5,612	16.3	4.6	20.7	77.8	1.4
5	-10,794	-1.97	TTL	537,158	96,446	62,272	157,328	372,571	7,259	18.0	11.6	29.3	69.4	1.4
			VAP	404,081	69,214	40,748	109,048	289,302	5,731	17.1	10.1	27.0	71.6	1.4
6	6,740	1.23	TTL	554,692	83,415	97,722	178,906	354,263	21,523	15.0	17.6	32.3	63.9	3.9
			VAP	388,435	52,636	60,541	111,869	262,154	14,412	13.6	15.6	28.8	67.5	3.7
7	23,216	4.24	TTL	571,168	26,633	60,513	86,385	459,404	25,379	4.7	10.6	15.1	80.4	4.4
			VAP	408,310	16,696	38,755	54,988	336,237	17,085	4.1	9.5	13.5	82.3	4.2
8	26,069	4.76	TTL	574,021	27,443	50,409	77,191	474,449	22,381	4.8	8.8	13.4	82.7	3.9
			VAP	443,855	19,673	34,520	53,767	374,217	15,871	4.4	7.8	12.1	84.3	3.6
9	-9,750	-1.78	TTL	538,202	64,378	57,239	120,670	410,150	7,382	12.0	10.6	22.4	76.2	1.4
			VAP	384,345	41,393	34,495	75,333	303,836	5,176	10.8	9.0	19.6	79.1	1.3
10	-17,694	-3.23	TTL	530,258	26,702	36,521	62,722	452,015	15,521	5.0	6.9	11.8	85.2	2.9
			VAP	387,950	17,166	23,261	40,137	337,074	10,739	4.4	6.0	10.3	86.9	2.8
11	-1,869	-0.34	TTL	546,083	58,445	84,943	141,936	389,754	14,393	10.7	15.6	26.0	71.4	2.6
			VAP	392,287	39,748	53,615	92,416	289,963	9,908	10.1	13.7	23.6	73.9	2.5
12	-1,661	-0.30	TTL	546,291	123,266	174,829	295,408	236,585	14,298	22.6	32.0	54.1	43.3	2.6
			VAP	384,694	81,723	106,351	186,494	188,287	9,913	21.2	27.6	48.5	48.9	2.6
13	-6,047	-1.10	TTL	541,905	316,629	91,112	402,545	126,169	13,191	58.4	16.8	74.3	23.3	2.4
			VAP	381,996	218,502	56,868	271,967	100,601	9,428	57.2	14.9	71.2	26.3	2.5
14	20,984	3.83	TTL	568,936	63,416	124,704	185,916	364,938	18,082	11.1	21.9	32.7	64.1	3.2
			VAP	430,890	43,442	82,412	124,542	291,987	14,361	10.1	19.1	28.9	67.8	3.3
15	-19,368	-3.53	TTL	528,584	84,879	301,982	383,392	133,749	11,443	16.1	57.1	72.5	25.3	2.2
			VAP	361,135	57,346	186,162	241,340	111,584	8,211	15.9	51.5	66.8	30.9	2.3
16	24,928	4.55	TTL	572,880	52,218	53,553	104,778	443,093	25,009	9.1	9.3	18.3	77.3	4.4
			VAP	433,989	35,653	35,700	70,707	345,817	17,465	8.2	8.2	16.3	79.7	4.0
17	18,704	3.41	TTL	566,656	58,910	88,275	145,228	374,895	46,533	10.4	15.6	25.6	66.2	8.2
			VAP	427,554	40,582	59,867	99,137	295,404	33,013	9.5	14.0	23.2	69.1	7.7

BEST AVAILABLE COPY

TOTAL STATE POPULATION 16,986,510
TOTAL DISTRICTS REQUIRED 31
IDEAL DISTRICT POPULATION 547,952

UNASSIGNED POPULATION 0
REMAINING DISTRICTS 0
UNASSIGNED MEAN DEVIATION .

	MEAN (AVERAGE)	SMALLEST POPULATION DIST.: 25	LARGEST POPULATION DIST.: 22
DISTRICT POPULATION	547,952	520,631	575,314
TOTAL DEVIATION	14,458	-27,321	27,362
PERCENT DEVIATION	2.64%	-4.99%	4.99%

PLAN'S RANGE OF DEVIATION: TOTAL = 54,683 PERCENT = 9.98%

NO. 91-1270

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ANN RICHARDS, Governor of Texas, et al.,

Appellants,

v.

LOUIS TERRAZAS, et al.,

Appellees.

AFFIDAVIT OF ALAN SCHOOLCRAFT

STATE OF TEXAS §
§ ss.:
COUNTY OF BEXAR §

BEFORE ME, the undersigned Notary Public, personally appeared ALAN SCHOOLCRAFT, known to me to be the person whose signature is subscribed below, who, being by me duly sworn, on his oath deposed and stated as follows:

1. My name is Alan Schoolcraft. I am over the age of 21 years and fully competent and qualified to make this affidavit. I have personal knowledge of all of the facts stated in this affidavit and they are true and correct.

2. I am member of the House of Representatives of the State of Texas, representing House District 121. I have been a member of the House of Representatives since 1981.

PAN2000
DATA: 1990 CENSUS DATA - UNADJUSTED
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DIST	DEVIATION TOTAL	DEVIATION PERCENT		POPULATION TOTAL	POPULATION BLACK	POPULATION HISPANIC	POPULATION BLK+HISP	POPULATION ANGLO	POPULATION OTHER
18	13,556	2.47	TTL	561,508	54,167	146,518	198,858	352,558	10,092
			VAP	400,161	37,119	91,673	127,692	265,984	6,485
19	234	0.04	TTL	548,186	24,547	334,831	358,031	182,666	7,489
			VAP	394,536	17,483	221,976	238,679	150,175	5,682
20	-17,002	-3.10	TTL	530,950	15,527	331,811	346,305	179,616	5,029
			VAP	355,829	10,414	206,004	215,852	136,430	3,547
21	0	0.00	TTL	547,952	15,152	344,207	358,608	181,722	7,622
			VAP	368,551	10,353	216,245	226,190	136,846	5,515
22	27,362	4.99	TTL	575,314	13,512	40,739	53,958	510,112	11,244
			VAP	413,208	9,078	24,964	33,889	371,848	7,471
23	-810	-0.15	TTL	547,142	263,114	118,775	377,123	159,480	10,539
			VAP	385,769	177,311	74,079	248,434	130,089	7,246
24	-14,423	-2.63	TTL	533,529	48,856	311,526	358,757	168,949	5,823
			VAP	357,393	33,610	193,694	226,404	126,868	4,121
25	-27,321	-4.99	TTL	520,631	29,857	91,167	120,146	393,889	6,596
			VAP	383,752	20,767	56,357	76,689	302,372	4,691
26	25,130	4.59	TTL	573,082	46,738	90,153	135,238	426,169	11,675
			VAP	415,022	30,642	57,248	86,988	319,610	8,424
27	-3,565	-0.65	TTL	544,387	1,570	444,091	445,211	96,437	2,739
			VAP	353,335	1,005	271,724	272,499	78,915	1,921
28	-24,389	-4.45	TTL	523,563	30,891	160,344	190,248	327,275	6,040
			VAP	369,493	19,960	94,012	113,508	251,581	4,404
29	0	0.00	TTL	547,952	17,223	389,144	404,939	135,647	7,366
			VAP	369,858	11,686	248,210	259,228	105,192	5,438
30	-23,163	-4.23	TTL	524,789	32,203	44,015	75,676	441,042	8,071
			VAP	390,353	21,797	26,535	48,020	336,550	5,783
31	-23,450	-4.28	TTL	524,502	22,049	103,478	124,855	391,348	8,299
			VAP	365,147	14,025	58,922	72,619	286,951	5,577
PLAN TOTALS			TTL	16,986,510	2,021,632	4,339,905	6,316,265	10,291,680	378,565
			VAP	12,150,671	1,363,770	2,719,586	4,056,274	7,828,352	266,045

DIST	% OF POPULATION BLACK	% OF POPULATION HISP	% OF POPULATION B+H	% OF POPULATION ANGLO	% OF POPULATION OTHER
18	9.6	26.1	35.4	62.8	1.8
	9.3	22.9	31.9	66.5	1.6
19	4.5	61.1	65.3	33.3	1.4
	4.4	56.3	60.5	38.1	1.4
20	2.9	62.5	65.2	33.8	0.9
	2.9	57.9	60.7	38.3	1.0
21	2.8	62.8	65.4	33.2	1.4
	2.8	58.7	61.4	37.1	1.5
22	2.3	7.1	9.4	88.7	2.0
	2.2	6.0	8.2	90.0	1.8
23	48.1	21.7	68.9	29.1	1.9
	46.0	19.2	64.4	33.7	1.9
24	9.2	58.4	67.2	31.7	1.1
	9.4	54.2	63.3	35.5	1.2
25	5.7	17.5	23.1	75.7	1.3
	5.4	14.7	20.0	78.8	1.2
26	8.2	15.7	23.6	74.4	2.0
	7.4	13.8	21.0	77.0	2.0
27	0.3	81.6	81.8	17.7	0.5
	0.3	76.9	77.1	22.3	0.5
28	5.9	30.6	36.3	62.5	1.2
	5.4	25.4	30.7	68.1	1.2
29	3.1	71.0	73.9	24.8	1.3
	3.2	67.1	70.1	28.4	1.5
30	6.1	8.4	14.4	84.0	1.5
	5.6	6.8	12.3	86.2	1.5
31	4.2	19.7	23.8	74.6	1.6
	3.8	16.1	19.9	78.6	1.5
PLAN TOTALS	11.9	25.5	37.2	60.6	2.2
	11.2	22.4	33.4	64.4	2.2

3. I did not call or direct anyone else to call Judge James Nowlin or any other member of the three-judge federal panel or its personnel on December 23, 1991. I was not in my Austin legislative office on the 23rd at the time the phone call to the court allegedly was made. The telephone number from which the call to the court allegedly was made is on a telephone instrument located in a common area adjacent to my office.

4. I never have called or directed anyone else to call Judge Nowlin or any other member of the panel or its personnel regarding this case, and have never spoken with any of these persons regarding this case, my plans to run for the Texas Senate, or any other aspect of redistricting.

5. I never have asked any person to call or speak with Judge Nowlin or any other member of the panel or its personnel regarding this case, my plans to run for the Texas Senate, or any other aspect of redistricting, and know of no one who did so on by behalf. To my knowledge, no one has spoken with any of these persons on my behalf.

6. On Friday, February 14, 1992, I learned that the Attorney General of the State of Texas had obtained the telephone logs reflecting calls made from my legislative office in Austin. I did not authorize the Attorney General to obtain these records, and did not know he intended to obtain them. I never was asked about my telephone logs before I learned of the allegations made to the United States Supreme Court on Friday, February 14, 1992.

I never was asked whether the allegations were true before they were made to the Supreme Court.

7. On February 14, 1992, immediately after learning of the allegations, I contacted the Attorney General of the State of Texas and informed his office that I have had no contact or communications with the Austin court or any of its personnel concerning this case or redistricting.

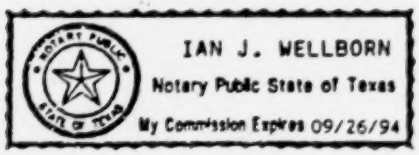
8. I absolutely deny any suggestion that I communicated with Judge Nowlin directly or through anyone else, and I resent the implication that any of us would conduct ourselves in that manner.

9. My first knowledge of the existence and configuration of this Court's interim senate plan came after the plan was announced to the public on December 24, 1991. Before that time, I neither knew nor was informed what the boundaries of the senate district I am running for were to be or the district my home was placed in.

Further affiant sayeth not.

ALAN SCHOOLCRAFT

SUBSCRIBED AND SWORN TO BEFORE ME THIS ___ day of February, 1992, to certify which witness my hand and official seal of office.



Notary Public, State of Texas

IAN J. WELLBORN
Printed Name

Commission Expires: 9/26/94

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	)	
	)	
Plaintiff	)	Civil Action No. 91-2383
	)	(PMW, U.S.C.A., SS, JHG)
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO
STATE OF TEXAS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The State of Texas seeks relief under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, concerning a redistricting plan for the Texas Senate adopted by the Texas Legislature and signed by the Governor on January 8, 1992 (Senate Bill 1 or S.B. 1), approximately three and a half months after the State filed its complaint. On January 9, 1992, the State submitted S.B. 1 to the Attorney General for administrative review under Section 5. We are continuing to examine that plan and our response is due on March 9. Procedures for the Administration of Section (28 C.F.R. 51.9, 51.35, 51.37). Although the State has not sought to amend its complaint to place S.B. 1 at issue in this action, it has moved for "partial summary judgment" and is seeking an expedited ruling from this Court.

The State's primary argument is that it is unnecessary to prove that the plan contained in S.B. 1 is free of the discriminatory purpose and effect proscribed by Section 5 either because the plan already has received Section 5 preclearance from the Attorney General or because it does not constitute a change

from the State's "existing" redistricting plan. In the alternative, the State argues that if preclearance is required for S.B. 1, the plan does not violate the retrogression standard of Section 5 because it is identical to the Senate plan for which preclearance was obtained on November 18, 1991. The State, however, does not seek summary judgment on the issue of discriminatory purpose. Nor does it contend that the issue of whether the plan satisfies the requirements of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, can be resolved on summary judgment. Indeed, the State's moving papers do not even contain a description of the plan, let alone a defense of its merits.

The United States opposes the instant motion, as well as the State's suggestion that an emergency exists warranting an expedited ruling by the Court. Quite simply, the State's motion is premised and dependent upon this Court ignoring the rulings of the three-judge court in the related case of Terrazas v. Slagle, C.A. No. 91-A-426 (W.D. Tex., orders of December 24, 1991 and January 10, 1992).[1] On December 24, 1991, the Terrazas court ordered the State to conduct this year's Senate elections under an interim plan devised by the court. Candidate filing under the court's plan was completed on January 10, 1992, and the campaign is well under way for the March 10, 1992, primary election. S.B. 1's redistricting plan constitutes a voting change subject to preclearance under Section 5, which has not received the

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[1] We are lodging with this Court, in a separate filing, those and other relevant orders in the Terrazas case.

requisite preclearance, because it is different from the plan put in place by the Terrazas v. Slagle court. It is the court's plan against which S.B. 1 must now be compared for purposes of Section 5's retrogression analysis. On that comparison, the State does not seek summary judgment.

Moreover, there exists no emergency requiring a ruling by this Court. S.B. 1 is not capable of implementation for the 1992 election -- even if Section 5 preclearance is obtained -- because of the Terrazas v. Slagle orders, which the Supreme Court has refused to stay. We recognize that the State has appealed those orders and raised some of the very same arguments presented in the instant motion. But unless and until the Terrazas v. Slagle orders are vacated or reversed, the State is not free to implement S.B. 1. Under these circumstances, we believe this Court need not rush into the fray and may wish to await the outcome of the State's pending appeal in Terrazas v. Slagle or a showing that S.B. 1 is capable of implementation if preclearance is obtained.

I. STATEMENT OF FACTS [2]

1. The Texas Senate consists of 31 members elected from single-member districts. Senators are elected to four-year, staggered terms. In 1992, all 31 Senate seats are up for

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[2] The United States does not disagree with the State's statement of Material Facts Not In Genuine Issue, except with respect to paragraph 5 of the statement which addresses the legal question put at issue by this motion. However, the statement does not adequately describe the facts surrounding the State's effort to adopt and implement a Senate redistricting plan for the 1992 elections. See also Statement of Genuine Issues.

election pursuant to Article 3, §3 of the state constitution which requires that the full Senate stand for election following the enactment of a redistricting plan. In 1992, the primary is to be held on March 10, the primary runoff on April 14, and the general election is on November 3, 1992.

2. On September 20, 1991, the State of Texas filed its complaint in the instant action seeking relief under Section 5 with respect to a redistricting plan for the Texas Senate.

3. The plan for which the State sought relief in its complaint had been adopted over three months earlier by the State. That plan, enacted in Senate Bill 31, was passed by the Texas Legislature in May 1991 and then became law on June 16, 1991, when the period for veto by the Governor ended.

4. Prior to the filing of this action, S.B. 31 also had been submitted to the Attorney General for Section 5 review, on August 9, 1991. At the time this action was filed, the Department of Justice was proceeding with its review of the voluminous data provided by the State in connection with its S.B. 31 submission and the submission of the House, congressional, and Board of Education plans.[3]

5. On October 8, 1991, the 60th day after receiving the submission of S.B. 31, the Attorney General received a letter from the State withdrawing its submission and submitting a new Senate redistricting plan. Accordingly, the Attorney General

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[3] The House plan was submitted to the Attorney General on September 12, the congressional plan on September 17, and the Board of Education plan on September 19.

wrote the State (also on October 8) that no Section 5 determination would be made on S.B. 31 since the plan had been withdrawn from Section 5 review and the State no longer intended to implement it. 28 C.F.R. 51.25 and 51.35.

6. The new plan received on October 8 resulted from a settlement the previous day of state court litigation challenging the S.B. 31 plan. Quiroz v. Richards, C.A. No. C-4395-91-F (332nd Jud. Dist., Hidalgo Cty.). The same settlement subsequently was entered on October 11 in parallel state court litigation brought in the same state district court. Mena v. Richards, C.A. No. C-454-91-F (332nd Jud. Dist., Hidalgo Cty.).[4] On October 15, 1991, the State filed a First Amended Complaint in the instant case seeking relief under Section 5 with respect to the Quiroz/Mena plan rather than S.B. 31. On November 18, 1991, the Attorney General granted preclearance to this plan and the State thereupon began implementation of the plan, including the opening of candidate qualifying.[5]

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[4] The Negrete applicants for intervention in the instant case are among the plaintiffs in the Mena state court suit. Both suits challenged the Senate redistricting enacted in S.B. 31 alleging that the plan violated provisions of the state constitution that protect minority voting rights.

[5] This action originally also dealt with the statewide plans for the Texas congressional delegation, the Texas Board of Education, and the Texas House of Representatives. As noted, these plans also were submitted to the Attorney General for administrative review under Section 5. The congressional and Board of Education plans received preclearance from the Attorney General on November 18, 1991, and in its December 2, 1991, Memorandum Opinion and Order, this Court held that the Attorney General's preclearance action mooted any necessity for review of these plans in this lawsuit. With respect to the House of

(continued...)

7. On December 17, 1991, the Texas Supreme Court held that the state district court in Quiroz and Mena had abused its discretion in entering judgment ordering into effect the Senate redistricting plan set forth in the parties' settlement agreement. The district court was ordered to vacate these judgments and reconsider the settlement agreement in light of certain factors specified by the State Supreme Court. Terrazas v. Ramirez, C.A. No. D-1817. The State accordingly halted its implementation of the Quiroz/Mena plan.

8. In a separate federal suit concerning the Senate redistricting issue, Terrazas v. Slagle, C.A. No. 91-A-426 (W.D. Tex.), the three-judge district court held a hearing from December 10 to 13, 1991 on plaintiffs' motions for preliminary relief.[6] On December 24, 1991, the court issued a Summary Opinion and Judgment ordering into effect for the 1992 Senate elections an interim, court-fashioned plan. The court concluded that because there was no legally enacted state plan that had

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[5](...continued)
Representatives, the Attorney General interposed a Section 5 objection on November 12, 1991. A three-judge district court in Texas ordered into effect an interim plan for the regular 1992 House elections, Terrazas v. Slagle, 91-CV-425 (W.D. Tex. Dec. 24, 1991), and the State has enacted a permanent plan for elections commencing in 1994, which plan the State has indicated will shortly be submitted to the Attorney General for administrative Section 5 review.

[6] The plaintiffs alleged that the plan enacted in S.B. 31 violated the United States Constitution and the Voting Rights Act, and their allegations included claims of minority vote dilution and partisan gerrymandering. The Terrazas applicants for intervention in this case are plaintiffs in the Texas federal litigation.

received Section 5 preclearance, it should determine whether the plan the State had enacted in S.B. 31 (later withdrawn from Section 5 review) should be implemented. The Terrazas plaintiffs had alleged that the plan violated the "results" standard contained in Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in that it denied black and Hispanic citizens an equal opportunity "to participate in the political process and to elect candidates of their choice." The district court found S.B. 31 deficient in the areas of Dallas and Tarrant Counties, Harris County, and Bexar County, south Texas and the Rio Grande Valley, and ordered into effect its own plan for the state Senate, which differed not only from S.B. 31 but also from the Quiroz/Mena plan. The court issued an Amended Order and Judgment on January 10, 1992.[7]

9. Subsequent to the decision of the Texas Supreme Court in Terrazas v. Ramirez and prior to the issuance of the December 24th Terrazas v. Slagle order, the Governor called the Texas

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[7] The Terrazas plaintiffs also filed separate suits, identically captioned, which address the state House redistricting (C.A. No. 91-A-425), and the congressional redistricting (C.A. No. 91-A-428). The hearing held from December 10 to 13 also dealt with the House and congressional plans. In its December 24, 1991 ruling, the court ordered into effect a House redistricting plan for the 1992 elections which altered the legislatively adopted plan in those areas of the state where the Attorney General had interposed a Section 5 objection. With respect to the congressional plan, the court denied plaintiffs' motion for relief.

United States Circuit Judge Garwood dissented in part from the December 24 order, on the ground that it should have provided that the plans ordered for the Senate and House would be vacated if the State timely adopted new plans which were precleared and not found invalid by any court.

Legislature into special session for the purpose of adopting a revised Senate redistricting plan. The session commenced on January 2, 1992, and on January 8 a new Senate plan was adopted by the Legislature and signed by the Governor (Senate Bill 1).[8] This plan is identical to the plan which was the subject of the settlement in Quiroz and Mena. The State also enacted a bill in the special session which provided for the primary to be postponed from March 10 to April 11, 1992, if that would result in the Terrazas v. Slagle court allowing the State to implement S.B. 1.[9] However, under the state constitution, a legislative enactment (other than a general appropriation act) does not become law until 90 days after the adjournment of the session in which it was adopted, unless it is passed by a two-thirds vote in each house. Tx. Const. art. III, §39. Neither S.B. 1 nor the election schedule bill passed by this margin.

10. The State of Texas moved the district court in Terrazas v. Slagle to vacate its order implementing the court-fashioned Senate redistricting plan and order instead the legislative plan embodied in S.B. 1. On January 10, the district court issued an Order and Judgment denying this motion and finding that S.B. 1

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[8] The special session also was called to consider the enactment of a revised plan for the state House. The plan which subsequently was adopted is not to be implemented until the 1994 elections, with the 1992 elections to be held pursuant to the plan ordered in Terrazas v. Slagle.

[9] On January 10, 1992, the State submitted to the Attorney General for administrative Section 5 review the voting changes occasioned by this enactment. The statutory 60-day review period ends on March 10, 1992. Neither the instant motion nor any other pleading in this action seeks relief regarding these changes.

"fails to satisfy the Sec. 2 requirements of the Voting Rights Act." Slip. op. at 12-13. The court also found that implementation of S.B. 1 would inappropriately require postponing the primary election until at least mid-April.[10] The State appealed and sought a stay pending appeal, however, the stay application was denied by the Supreme Court on January 16, 1992. The State has filed its Jurisdictional Statement and a motion for expedited review.

11. Presently pending before the district court in Terrazas v. Slagle is a motion filed by the State, on February 10, 1992, renewing the request for the court to vacate its order compelling use of the court-ordered Senate plan for the 1992 elections. The State also moved on February 10 for recusal of one of the three members of the Terrazas panel, United States District Judge Nowlin.[11]

12. Election officials of the State of Texas are proceeding to implement the court-ordered plan for the March 10, 1992 primary election. The candidate qualification period closed on January 10, 1992, and voting under the State's "early voting" system will begin on February 19, 1992.

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[10] United States Circuit Judge Garwood dissented, stating that the court should first allow the State the opportunity to obtain preclearance of S.B. 1 and then consider whether S.B. 1 complies with Section 2.

[11] The basis for these motions is in part the information set forth in the excerpted deposition of State Representative George Pierce which accompanies the State's motion for partial summary judgment.

II. ARGUMENT

Section 5 of the Voting Rights Act provides that covered jurisdictions, including the State of Texas, may not implement any change affecting voting unless and until federal preclearance is obtained, either from this Court or the United States Attorney General. To obtain preclearance, Section 5 places on Texas the burden of demonstrating that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or [membership in a language minority group]."[12] Georgia v. United States, 411 U.S. 526 (1973). In addition, preclearance must be denied where the change presents "a clear violation of amended section 2." 28 C.F.R. 51.55(b)(2).[13]

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[12] Section 14(c)(3) of the Act, 42 U.S.C. 19731(c)(3), defines "language minority group" to include persons "of Spanish heritage."

[13] By the instant motion, the State seeks to address only one aspect of Section 5's nondiscrimination test--whether the change is nonretrogressive. In Beer v. United States, 425 U.S. 130, 141 (1976), the Supreme Court held that a change may not be precleared under the effect prong of the test where it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." However, a conclusion that the State's redistricting plan is nonretrogressive would not end the Section 5 inquiry. The State also would need to prove that the plan is free of a discriminatory purpose, Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1116 (1983), and the Court might be called upon to resolve issues regarding whether the plan violates the Section 2 "results" standard.

A. There Are No Exigent Circumstances That Warrant Expedited Consideration of the State's Motion

Throughout this litigation, the State has urged that this Court must immediately grant relief under Section 5 to permit the State to implement its four statewide redistricting plans at the regularly scheduled March 10, 1992 primary election. As suggested by the United States, the Court has declined to act on these requests, instead deciding that judicial economy would be best served by allowing the administrative preclearance process (initiated by the State) to run its course.[14] This resulted in three of the four plans being precleared in mid-November, in sufficient time for implementation in 1992, and with respect to the fourth plan (for the state House) the State decided after the objection to defer implementing a legislatively adopted plan until the 1994 elections. Because of the Texas Supreme Court's decision in Terrazas v. Ramirez, supra, the State was unable to implement the precleared Senate plan.

Similarly, the State is mistaken in now claiming that this Court must immediately rule on the Senate redistricting plan adopted on January 8, 1992. As matters now stand, the rulings in Terrazas v. Slagle preclude implementation of S.B. 1 even if preclearance were granted under Section 5. The State is actively

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[14] As set forth in the memorandum filed by the United States on October 25, 1991, in response to the State's Motion for Expedited Answer and Expedited Pretrial Conference, Section 5 declaratory judgment suits are de novo proceedings, not actions to review the Attorney General's determination.

preparing to hold a primary in less than a month pursuant to the plan ordered in Terrazas v. Slagle, and does not now contend that even if all legal obstacles to implementation of S.B. 1 were eliminated, the plan could be used for the March 10 primary. Indeed, its effort here could not be aimed at allowing it to hold the 1992 elections pursuant to S.B. 1 since the Terrazas court, on January 24, 1992, enjoined State officials, including the Attorney General, from taking any action in any "pending or subsequently filed litigation (other than this action) that would conflict or interfere with this Court's Orders [which provide for implementation in 1992 of the court-ordered Senate plan]."

Furthermore, the legal standing of the redistricting plan enacted in S.B. 1 is open to doubt since the Terrazas v. Slagle court has determined that the plan violates Section 2 of the Voting Rights Act. Of course, the possibility exists that the Supreme Court will reverse, or the Terrazas court will grant the State's motion to vacate its order. However, judicial economy would best be served by this Court deferring action until further developments in the Terrazas v. Slagle litigation indicate whether something more than a mere possibility exists that the plan could be implemented.

B. The Senate Redistricting Plan Adopted by the State on January 8, 1992 Constitutes a Voting Change Subject to Section 5 Preclearance

The State's claim that S.B. 1 is not a change subject to Section 5 review is built on the sands of a single faulty premise. The "crux" of its argument is that the redistricting

enacted in S.B. 1 is identical to the Quiroz/Mena settlement plan previously precleared by the Attorney General. Therefore, according to the State, it follows that the S.B. 1 plan already has been precleared or does not represent a voting change subject to preclearance.[15] State's Memorandum, at 5. However, the State blinks at the obvious -- between Quiroz/Mena and S.B. 1 came Terrazas v. Slagle, and because S.B. 1 represents a change from Terrazas it is subject to Section 5 preclearance.

The determination as to whether S.B. 1 differs from the existing practice, and thus constitutes a "change," is primarily a factual one and rests on an analysis of whether S.B. 1 differs from the redistricting plan currently "in force or effect," i.e., the plan that would be implemented if the election were held today. Perkins v. Matthews, 400 U.S. 379, 394-395 (1973); accord City of Lockhart v. United States, 460 U.S. 125 (1983).[16] There

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[15] The State's claim that preclearance already has occurred rests on the "identity of the plans" argument, and the State is not contending that the Attorney General has literally granted preclearance to S.B. 1.

[16] In Perkins, the question presented was what practice or procedure was "in force or effect" on the coverage date because no intervening change has occurred prior to the effectuation of the change there at issue. The Court held that the determination of what was "in force or effect" on the coverage date was dependent on determining what practice would have been used if an election had been held on that date.

Section 5 literally requires Texas to obtain preclearance whenever it "enact[s] or seek[s] to administer any voting ... practice[] or procedure ... different from that in force or effect on November 1, 1972" (the coverage date). However, once intervening changes are adopted and implemented, the new provision generally is compared to the existing practice or procedure. City of Rome v. United States, 446 U.S. 156, 182 (1980).

can be no question but that the plan "in force or effect" is the plan ordered by the district court in Terrazas v. Slagle.

S.B. 1 clearly differs from the court-ordered plan and thus may not be implemented without Section 5 preclearance. The fact that the redistricting plans that immediately precede and follow the Terrazas plan are identical in substance does not alter the fact that a change has occurred. See Gresham v. Harris, 695 F.Supp. 1179 (N.D.Ga. 1988), sum. aff'd sub nom., Poole v. Gresham, 110 S. Ct. 2556 (1990); Dotson v. City of Indianola, 521 F. Supp. 934, 943 (N.D. Miss. 1981), sum. aff'd, 456 U.S. 1002 (1982) (once a voting practice has been precleared, a jurisdiction that seeks to return to the practice in effect prior to the precleared change must obtain Section 5 preclearance).[17]

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[17] As set forth below, the State contends that the Terrazas v. Slagle plan may not serve as the benchmark for judging retrogression because it has not been precleared. To the extent that the State also claims that this lack of preclearance disables the Terrazas plan from serving as the basis for evaluating whether a change has occurred, this argument fails for the reasons set forth infra.

The State characterizes the "change" issue in terms of whether a change in the form of enactment, but not the substance, triggers Section 5 review (i.e., the change between the plan being enacted by state court order in Quiroz and Mena, and the plan's enactment in S.B. 1). Irrespective of whether the State is correct on this question, the State's formulation ignores the presence of the intervening Terrazas plan, which is legally enforceable under Section 5 despite the lack of preclearance. Also, the State's reliance on the Supreme Court's recent decision in Presley v. Etowah County, 60 U.S.L.W. 4135 (U.S. Jan. 28, 1992), is misplaced. That case dealt with whether a transfer of powers possessed by elected officials constitutes a voting practice or procedure within the meaning of Section 5, an issue completely unrelated to the benchmark issue in this case. The State also cites Morris v. Gressette, 432 U.S. 491 (1977), where the Court held that the Attorney General's administrative Section 5 decisions are nonreviewable. This also is inapposite.

C. The Terrazas Plan Forms the Proper Benchmark for Determining Whether S.B. 1 Satisfies the Retrogression Test

The State's claim that S.B. 1 is not retrogressive as a matter of law also rests on the mistaken conclusion that S.B. 1 should be compared to the identical Quiroz/Mena plan. This too is incorrect. The proper benchmark for judging retrogression is the redistricting plan ordered by the United States district court in Terrazas v. Slagle.

As set forth in the Attorney General's Procedures for the Administration of Section 5, the retrogression benchmark normally is "the voting practice or procedure in effect at the time of the submission." 28 C.F.R. 51.54(b)(1). Thus, following initial coverage under Section 5, the first enactment is compared to the practice or procedure in effect on the coverage date, and generally as each new practice or procedure is precleared, it becomes the benchmark for evaluating the next matter which is enacted or to be administered. 28 C.F.R. 51.54(b).

The State contends, however, that the Terrazas v. Slagle plan is disqualified because it has not received Section 5 preclearance. We agree with the State that, in determining the benchmark for retrogression purposes, policy concerns may preclude the practice or procedure in effect from serving as the benchmark and that, as noted by the State, a plan that has not been precleared and is subject to preclearance may not serve as

the retrogression benchmark. 28 C.F.R. 51.54(b).[18] The error in the State's argument is that, as a court-ordered plan, the Terrazas v. Slagle plan is legally erforceable under Section 5 even though it has not undergone Section 5 review. Thus, its unprecleared status is of no import in determining the retrogression benchmark.

The State specifically relies on the Attorney General's regulation set forth at 28 C.F.R. 51.54(b)(3) for the proposition that the Terrazas plan is not the benchmark. State's Memorandum at 9, fn. 2. This regulation provides: "The implementation and use of an unprecleared voting change subject to Section 5 review under §51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction." (Emphasis added.) Section 51.18(a) provides in turn that: "Changes affecting voting that are ordered by a Federal court are subject to the preclearance requirement of section 5 to the extent that they reflect the policy choices of the submitting authority."

This section reflects the decisions of the Supreme Court in McDaniel v. Sanchez, 452 U.S. 130 (1981), and Connor v. Johnson, 402 U.S. 690 (1971). In McDaniel, the Court held that Section 5

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[18] Otherwise, a jurisdiction might adopt a series of retrogressive changes, submit the final change in the series, and argue that, as compared with the immediately preceding practice, the change is nonretrogressive. In its most recent consideration of Section 5, Congress recognized that policy concerns may properly be considered in determining whether the existing practice may serve as the retrogression benchmark. S. Rep. No. 417, 97th Cong., 2nd Sess. 12, n. 31 (1982).

review is required when a federal court approves and orders into effect a redistricting plan that reflects the policy choices of the covered jurisdiction. The Court also reaffirmed its holding in Connor that a plan formulated by a federal court is outside the scope of Section 5.

The Terrazas v. Slagle plan was formulated by that court and, as evidenced by the State's ardent opposition to the plan, it does not reflect the State's policy choices. Accordingly, it is not subject to Section 5 preclearance and its unprecleared status does not disqualify it from serving as the benchmark.

In previous Section 5 declaratory judgment actions, this Court has ruled that court-ordered redistricting plans may serve as the benchmark for judging retrogression. State of Mississippi v. Smith, 541 F. Supp. 1329, 1333 (D.D.C. 1982) (the submitted plan "must, at a minimum, be shown not to be retrogressive relative to the plan ordered into effect by the Three-Judge Mississippi Court"); State of Mississippi v. United States, 490 F. Supp. 569, 582 (D.D.C. 1979) (the court-ordered plan "must now be considered the preexisting plan and the benchmark"), sum. aff'd, 444 U.S. 1050 (1980).[19]

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[19] In certain circumstances, policy concerns may arise with respect to treating a court-ordered plan as the benchmark, unrelated to the preclearance question raised by the State. For example, in State of Mississippi v. United States, Justice Stevens, concurring in the judgment, disagreed with the district court's conclusion that the 1979 court-ordered plan was the benchmark. He cited the fact that it was a back-up plan that had not actually been implemented, and thus, he argued, any changes to that plan could not have retrogressed minority voting potential. He also expressed concern that "to require a state

(continued...)

For these reasons, the Terrazas v. Slagle plan constitutes the benchmark plan for determining whether the redistricting plan adopted in S.B. 1 is retrogressive.

D. The State Has Failed to Present Any Factual Information to Meet its Burden of Demonstrating That S.B. 1 is Not Retrogressive

The State's retrogression argument is based entirely on its conclusion that there is no substantive difference between the plan enacted in S.B. 1 and the plan it contends is the benchmark, the Quiroz/Mena plan. The state has presented no evidence whatsoever comparing S.B. 1 to the Terrazas v. Slagle plan.[20] Thus, the State does not seek a ruling on the absence of a retrogressive effect if this Court determines that the Terrazas plan is the proper benchmark.[21]

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[19](...continued)
legislature to predict what court-ordered plans may be entered while a Voting Rights Act suit is pending and then to draw its plan to ensure that no dilution occurs seems to me to be a futile exercise clearly not required by the statute." 444 U.S. at 1052. However, Justice Stevens recognized that court-ordered plans may serve as the benchmark, and he wrote that a 1975 court-ordered plan (which had been imposed and implemented prior to the enacted plan at issue) was the benchmark in that case.

Whether or not these concerns might, in the appropriate case, lead this Court to disqualify a court-ordered plan from serving as the benchmark, they have no relevance here where the court-ordered plan is being implemented and was adopted prior to the enactment of the State's preferred plan.

[20] For example, the State has not provided this Court with any census data or maps for the two plans, which necessarily would be the starting point for comparing them.

[21] The retrogression comparison between S.B. 1 and the Terrazas v. Slagle plan is not necessarily a simple one. The Terrazas court concluded that its plan provides minority voters with a greater electoral opportunity while the Mena court, in a (continued...)

CONCLUSION

For the foregoing reasons, this Court may wish to defer ruling on the instant motion pending action by the Supreme Court on the State's appeal in Terrazas v. Slagle or a showing that S.B. 1 is capable of implementation if preclearance is obtained. On the merits of the motion, the Court should deny the State's motion for partial summary judgment on all grounds and order the State to amend its complaint if it seeks to pursue preclearance of S.B. 1 before this Court.

Respectfully submitted,

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[21](...continued)
decision rendered on January 13, 1992, found that S.B. 1 is superior to Terrazas. (The United States will lodge a copy of this unreported decision with the Court along with the relevant unreported decisions in Terrazas.)